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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 495

D. C. GILLASPIE, INDIVIDUALLY AND AS NEXT FRIEND OF JAMES D. GILLASPIE, A MINOR,

Petitioner,

v.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND BRIEF IN SUPPORT THEREOF.

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Petitioner,

v.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND BRIEF IN SUPPORT THEREOF.

To the Honorable Supreme Court of the United States:

Come now the Petitioners, D. C. Gillaspie, individually, and as next friend and on behalf of the Petitioner, James D. Gillaspie, a minor, and file this their Petition for a Writ of Certiorari to the Supreme Court of Texas, and would respectfully show the Court:

Statement of the Matter Involved

The Petitioner, D. C. Gillaspie, is the father of James D. Gillaspie, a minor. D. C. Gillaspie, for convenience, will be here referred to as the father, and the Petitioner, James D.

Gillaspie, will be referred to as the son. On January 19, 1952, the son was involved in an automobile collision in San Antonio, Texas. The automobile driven by the son collided with two other automobiles. The father was not in the automobile at the time of the collision. As a result of the collision, property damage in excess of $100 was sustained by the other two automobiles. The son was and still is a minor. The automobile driven by the son was owned by the father. Both the father and son were the holders of valid drivers' licenses issued by the State of Texas, but neither the father nor the son was possessed of public liability insurance at the time of the collision. On the occasion of the collision, the son was driving the automobile with his father's implied consent. On such occasion, he was driving the automobile on a personal mission for his own pleasure and was not acting as agent for his father, nor was he engaged in anywise for the benefit of his father (R. 12, 13). On March 14, the Respondent, the Department of Public Safety of the State of Texas, issued notices of suspension to each of the Petitioners (R. 13, 14, 15, 16, 17), requiring each of them to deposit with the Respondent the sum of $2,181.72, or otherwise suffer the penalties set out in said notices of suspension (R. 13). Specifically, the suspension notice to the son sought to suspend his drivers license if he did not make such deposit (R. 14-15). The notice of suspension to the father sought to suspend and required him to surrender all Texas registration certificates and registration plates held by him if he failed to make the required deposit (R. 16-17).

Petitioners duly appealed from such suspension orders to the County Court at Law No. 2 of Bexar County, Texas (R. 1-6), by filing a suit to reverse said suspension orders and the Judge of said Court stayed the enforcement of said suspension orders pending final judgment (R. 6-7). On trial to the Court without a jury, the trial court made his finding of fact (R. 12, 13), as above set out, and further found that

the amount of damages for which the son might be liable, as a result of the collision, was $1190. The judgment of the trial court modified the order of the Respondent directed to the son, by reducing the amount of the required deposit to $1190, and reversed the Respondent's order directed to the father, permanently enjoining the enforcement of said order against the father (R. 10-12), and by his conclusions of law, the trial court found that the father, D. C. Gillaspie, is not responsible for the damages which may have been incurred by his minor son, James D. Gillaspie; and therefore, the order of the Texas Department of Public Safety, directed to him, the said D. C. Gillaspie, is invalid (R. 13). The Respondent Department of Public Safety duly appealed to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas from that portion of the judgment reversing and enjoining the enforcement of the Respondent's order against the father. By cross-appeal, the son appealed to said Court of Civil Appeals from that portion of the trial court's judgment modifying and, as modified, affirming the order of the Respondent issued against him. The Court of Civil Appeals reversed the judgment of the trial court, insofar as the same held invalid the Respondent's order against the father, and affirmed that portion of the trial court's judgment rendered against the son. The official report of the opinion of the Court of Civil Appeals is reported under the style *Department of Public Safety* v. *Gillaspie,* 254 S.W. 2d 180. Thereafter, Petitioners duly obtained an appellate review of the decision and judgment of the Court of Civil Appeals by the Supreme Court of Texas which, on June 17, 1953, affirmed the judgment of the Court of Civil Appeals (R. 31-41). The official opinion of the Supreme Court of Texas (R. 31-41) is reported under the style *Gillaspie* v. *Department of Public Safety,* in 259 S. W. 2d 177. Petitioner's motion for rehearing was denied and overruled by the Supreme Court

of Texas on July 15, 1953 (R. 42). On August 4, 1953, the Supreme Court of Texas rendered its order staying the enforcement of its judgment against Petitioners to permit them to petition this Honorable Court for a writ of certiorari (R. 43). On October 13, 1953, the Honorable Hugo L. Black, Associate Justice of this Court, extended the time for filing the petition for writ of certiorari in this cause to and including November 23, 1953, and again on November 23rd, 1953, the Honorable Hugo L. Black, Associate Justice of this Court, further extended the time for the filing of the record and petition for a writ of certiorari in this cause to and including December 12th, 1953. This petition and the printed record are filed and docketed herein within the extended time.

Petitioners contended in the trial court, in the Court of Civil Appeals and in the Supreme Court of Texas, that Article 6701h of Vernon's Annotated Civil Statutes of Texas, the Texas Motor Vehicle Safety-Responsibility Law, by authority of which the Respondent issued the suspension orders against Petitioners, denies them due process of law and the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

Basis of Jurisdiction

The Supreme Court of the United States has jurisdiction of this proceeding under Title 28, Section 1257, paragraph 3, United States Code Annotated.

The statute of the State of Texas, the validity of which is here involved, is Article 6701h of Vernon's Annotated Civil Statutes of Texas, and may be found in the 1953 Cumulative Pocket Part of Volume 19 of Vernon's Annotated Civil Statutes of Texas, on pages 90 to 106, inclusive, of said pocket part. The principal portion of said article 6701h, which is

here directly under attack, is Section 5 of Article III, which provides as follows:

"SEC. 5. SECURITY REQUIRED UNLESS EVIDENCE OF INSURANCE — WHEN SECURITY DETERMINED — SUSPENSION—EXCEPTIONS.

(a) If twenty (20) days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death, or damage to the property of any one (1) person in excess of One Hundred Dollars ($100), the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this Section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, within sixty (60) days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a non-resident the privilege of operating a motor vehicle within this State, and if such owner is a non-resident the privilege of the use within this State of any motor vehicle owned by him, *unless such operator or owner or both shall deposit security* in the sum so determined by the Department provided notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security. Where erroneous information is given the Department with respect to the matters set forth in Subdivisions 1, 2 and 3 of Subsection (c) of this

Section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it of correct information with respect to said matters.

(c) This Section shall not apply under the conditions stated in Section 6 nor:

1. to such operator or owner if such owner had in effect at the time of such accident a motor vehicle liability policy with respect to the motor vehicle involved in such accident;

2. to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy with respect to his operation of motor vehicles not owned by him;

3. to such operator or owner if the liability of such operator owner for damages resulting from such accident is, in the judgment of the Department, covered by any other form of liability insurance policy; nor

4. to any person qualifying as a self-insurer under Section 34 of this Act, or to any person operating a motor vehicle for such self-insurer.

No such policy shall be effective under this Section unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or the most recent renewal thereof, such policy shall not be effective under this Section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action upon such policy arising out of such accident; providing, however, every such policy is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than Five Thousand Dollars ($5,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit

of not less than Ten Thousand Dollars ($10,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Five Thousand Dollars ($5,000) because of injury to or destruction of property of others in any one accident."

Other portions of the law pertinent to a proper disposition of the case are Section 2(b) and 2(c) of Article II, Sections 4, 6, 7, 9, and 10 of Article III, and the portions thereof pertinent hereto are set forth in the brief filed in support of this petition.

Questions Presented

First Question

Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid and deprives Petitioners of their property and privileges without due process of law and denies them the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5 requires the suspension of the Petitioner James D. Gillaspie's drivers license and requires the suspension and surrender of the Petitioner D. C. Gillaspie's motor vehicle registrations and license plates because James D. Gillaspie, while driving an automobile owned by his father, D. C. Gillaspie, was involved in a collision, without having public liability insurance, and requires such suspension without regard to the liability of either of Petitioners for damages to any person as a result of said collision, and without affording or making provisions for any character of hearing to determine the liability or probable liability of Petitioners for damages.

Second Question

Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as applied to the Petitioner, D. C. Gillaspie, and deprives him of his property and the equal protection of the law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that, under the undisputed findings of fact of the trial court and under the established law of Texas, the Petitioner, D. C. Gillaspie, is not and cannot be held liable in damages to any person as a result of the collision involved but nevertheless, and in spite of his non-liability to any person in damages, he is deprived of his property under the terms of the law in question.

Third Question

Section 5(b) of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as to both Petitioners, and deprives them of their privileges and property and of the equal protection of the law, in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5(b) permits the Respondent Department of Public Safety to suspend the drivers license and motor vehicle registrations of Petitioners unless they deposit the amount of security as is fixed by the Department, and yet no standards or criteria are set forth to govern said Department in arriving at the amount of security to be required of Petitioners.

Statement under Questions Presented

The three questions here presented as to the constitutionality of the Texas Motor Vehicle Safety-Responsibility Law were directly raised and presented in the trial court (R. 1-6), in the Court of Civil Appeals and in the Supreme Court (R. 25, 26, 27, 29, 30).

Reasons Relied On for Allowance of the Writ

The Supreme Court of Texas has decided the federal questions involved contrary to the applicable decisions of the Supreme Court of the United States and of the other federal courts. Forty-one of the forty-eight States now have safety responsibility laws. After diligent research the trial court, the Court of Civil Appeals, the Supreme Court of Texas, counsel for Petitioners and the Attorney General of Texas have been unable to find that any case involving the validity of a safety responsibility law has ever been presented to this Honorable Court for decision. We find no denial of certiorari in any of the reported cases from any of the States having safety responsibility laws, nor do we find any opinion of this Honorable Court directly passing upon the constitutionality of any such law. The questions here presented are of the utmost importance to all of the citizens of the State of Texas and to all citizens of the numerous other states having safety responsibility laws containing provisions in common with the safety responsibility law under attack in this case. The Supreme Court of Texas, in its opinion in the case at bar, has held that the use of the public highways of the State of Texas is a privilege and not a property right, but the questions here presented cannot be brushed aside with such disdain. Without conceding the point, it may be that the personal right to drive an automobile is a mere privilege; but can it be said that the complete denial to a citizen of the use of his automobile, even though driven by a driver of unquestioned competence, so as to effectively remove said automobile from the public highways, constitutes the denial of a mere privilege and not property in the constitutional sense? The Supreme Court of Texas has sustained the law involved on the theory that since the use of the public highways is, in its opinion, a mere privilege, that the deprivation of such privilege

may be accomplished without due process of law. It is felt that this Honorable Court should settle the question that an automobile is a lawful product of commerce, that the use of an automobile on the public highways by a licensed and competent driver, for the benefit of the owner of the automobile, is property in the constitutional sense, and that an owner of an automobile may not have the same removed from the highways and its use denied to him except by due course of the law of the land.

WHEREFORE, the Petitioners, D. C. Gillaspie and James D. Gillaspie, a minor, by his next friend, D. C. Gillaspie, pray that a writ of certiorari be granted herein, directed to the Supreme Court of Texas, and that on hearing hereof the judgment of the Supreme Court of Texas be reversed, and that all other proceedings be had herein as provided by law.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 495

D. C. GILLASPIE, INDIVIDUALLY AND AS NEXT FRIEND OF JAMES D. GILLASPIE, A MINOR,

Petitioner,

vs.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,

Respondent

BRIEF IN SUPPORT OF PETITION

To the Honorable Supreme Court of the United States:

Come now the Petitioners, D. C. Gillaspie, and James D. Gillaspie, a minor, by and through his next friend, D. C. Gillaspie, and complaining of the Respondent, the Department of Public Safety of the State of Texas, and respectfully file and submit this their brief in support of their Petition for a Writ of Certiorari filed herein as follows:

Reference to Official Reports of Opinions Delivered in the Courts Below

The opinion of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas is reported in 254 S. W.

2d 180. The opinion of the Supreme Court of Texas, the appellate court of last resort in civil cases in the State of Texas, and to which Court the Writ of Certiorari is sought to be directed, is reported in 259 S. W. 2d 177.

Statement of Jurisdiction

The Supreme Court of the United States has jurisdiction of this proceeding under Title 28, Section 1257, paragraph (3), United States Code Annotated.

Statement of the Case

Article 6701h of the Revised Civil Statutes of Texas, known as the Texas Motor Vehicle Safety-Responsibility Act, was enacted by the 52nd Legislature of Texas, and became effective on January 1, 1952. On January 18, 1952, the Petitioner, James D. Gillaspie, a minor, was driving an automobile in San Antonio, Texas, and became involved in a collision with two other automobiles. He was alone in the car at the time of the collision. The automobile belonged to his father, the Petitioner, D. C. Gillaspie (R. 12-13). On March 19, 1952, both Petitioners received through the mail written notices issued to them by the Respondent, the Department of Public Safety of Texas, advising each of Petitioners that unless they deposited the sum of $2,181.72 with the Respondent within a specified time, that the driver's license of the son would be suspended, and that all automobile registrations of the father would be suspended and he would be required to surrender all license plates on his automobiles (R. 13). Said notices of suspension stated that they were issued under the terms of the Texas Motor Vehicle Safety-Responsibility Act (R. 14, 15, 16, 17). Not having public liability insurance and declining to make the required deposit, Petitioners instituted this suit in the nature of an appeal from said orders of the Respondent in

the County Court at Law No. 2 of Bexar County, Texas, attacking the validity of the law and seeking to enjoin its enforcement against them (R. 1-6). Upon the filing of the suit the trial judge entered an order staying the enforcement of the orders of the Respondent during the pendency of the suit (R. 6-7). On trial to the court, without a jury, judgment was rendered reversing the order of the Department as to the father, enjoining its enforcement against him, reducing the amount of security required to be deposited by the son and, as so reduced, affirming the Department's order against him (R. 10-12). The Department of Public Safety duly appealed to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, at San Antonio, as to that portion of the judgment rendered in favor of the father and, by cross-appeal, the son assigned error in the Court of Civil Appeals to that portion of the judgment rendered against him. The Court of Civil Appeals sustained the validity of the law as against Petitioners' contention that the law violated the Fifth and Fourteenth Amendments to the Federal Constitution, reversed the judgment of the trial court and reinstated the Department's order issued against the father and sustained the judgment of the trial court which, with modification, affirmed the Department's order against the son (R. 17-23). Both Petitioners, by writ of error, obtained a review of the judgment of the Court of Civil Appeals by the Supreme Court of Texas, again urging the constitutional questions presented to the Court of Civil Appeals (R. 25, 26, 27, 29, 30). On June 17, 1953, the Supreme Court of Texas, the appellate court of last resort in Texas, sustained the validity of the law in question and affirmed the judgment of the Court of Civil Appeals (R. 31-42). The Supreme Court of Texas duly stayed the enforcement of judgment against Petitioners to permit them to petition this Honor-

able Court for a writ of certiorari (R. 43), and in due time and form the petition for a writ of certiorari, this brief, and the record have been duly docketed in this Court.

Assignments of Error

First Assignment of Error

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid and deprives Petitioners of their property and privileges without due process of law and denies them the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5 requires the suspension of the Petitioner James D. Gillaspie's drivers license and requires the suspension and surrender of the Petitioner D. C. Gillaspie's motor vehicle registrations and license plates because James D. Gillaspie, while driving an automobile owned by his father, D. C. Gillaspie, was involved in a collision, without having public liability insurance, and requires such suspension without regard to the liability of either of Petitioners for damages to any person as a result of said collision, and without affording or making provisions for any character of hearing to determine the liability or probable liability of Petitioners for damages.

Second Assignment of Error

The Supreme Court of Texas erred in sustaining the validity of the order of the Respondent issued against Petitioner, D. C. Gillaspie, in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as applied to the Petitioner D. C. Gillaspie, and deprives him of his property and the equal protection of the

law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that, under the undisputed findings of fact of the trial court and under the established law of Texas, the Petitioner, D. C. Gillaspie, is not and cannot be held liable in damages to any person as a result of the collision involved but nevertheless, and in spite of his non-liability to any person in damages, he is deprived of his property under the terms of the law in question.

Third Assignment of Error

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5(b) of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as to both Petitioners, and deprives them of their privileges and property and of the equal protection of the law, in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5(b) permits the Respondent Department of Public Safety to suspend the drivers license and motor vehicle registrations of Petitioners unless they deposit the amount of security as is fixed by the Department, and yet no standards or criteria are set forth to govern said Department in arriving at the amount of security to be required of Petitioners.

First Assignment of Error

(Restated)

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid and deprives Petitioners of their property and privileges without due process of law and denies them the equal protection

of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said Section 5 requires the suspension of the Petitioner James D. Gillaspie's drivers license and requires the suspension and surrender of the Petitioner D. C. Gillaspie's motor vehicle registrations and license plates because James D. Gillaspie, while driving an automobile owned by his father, D. C. Gillaspie, was involved in a collision, without having public liability insurance, and requires such suspension without regard to the liability of either of Petitioners for damages to any person as a result of said collision, and without affording or making provisions for any character of hearing to determine the liability or probable liability of Petitioners for damages.

Statement and Argument under First Assignment of Error

D. C. Gillaspie, one of the plaintiffs below, will be referred to as "the father" for the sake of brevity. The Petitioner, James D. Gillaspie, a minor, will be referred to as "the son". The Department of Public Safety is hereafter referred to as the "Department".

Section of Article III of the Act, Article 6701h, provides that if, within twenty days after the receipt of a report of a motor vehicle accident which has resulted in bodily injury or death, or damage to the property of anyone in excess of $100, the Department does not receive satisfactory evidence from the persons involved that they have been released from liability, or that they have been finally adjudicated not to be liable, the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy all judgments for damages *"as may be recovered against each operator or owner"*. It further provides that if, within sixty days after such report of a motor vehicle accident, the owner or operator has not deposited security

in the sum so determined, *"the Department shall . . . suspend license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident"*.

The Act makes it the mandatory duty of the Department to suspend the operator's licenses of each operator, and registrations of each owner, without determining or inquiring into the liability of such operator owner for damages to any person as a result of the accident, unless the security determined by the Department is deposited with it. It is fundamental under all Federal and State constitutions that laws enacted under the police power, and which have the effect of interfering with a citizen in the exercise of his privileges and use of his property, must not be unreasonable or oppressive. The State may not take privately owned property away from a citizen, however, unless the taking is authorized under some recognized authority incident to the police power, nor then except by due process of law. Section 30 of Article V of the Act provides that if an owner's registration has been suspended under the Act, such registration shall not be transferred nor the motor vehicle in respect of which such registration was issued registered in any other name. Article 1434 of the Penal Code of Texas provides that no person shall sell or transfer a motor vehicle unless the same is duly registered, and requires that whoever shall sell or transfer a motor vehicle shall deliver to the transferee the license receipt issued by the Department for registration thereof for the current year. Article 1435 of the Penal Code further inhibits the transfer of an automobile without the filing of the license receipt and registration. Under the Act involved these license receipts and registrations are required to be suspended by the Department unless security is deposited in compliance with the Department's determination of the amount thereof, and without regard to the liability of the

owner for damages to anyone as a result of the accident. When such suspension is made effective by the Department, the owner cannot sell nor mortgage his automobile while the suspension is in effect. The denial to an owner of the right to sell or encumber his automobile certainly constitutes a taking of that property. *Bielecki* v. *City of Port Arthur* (Comm. App.), 12 S. W. (2) 976; *City of Wink* v. *Griffith Amusement* (Sup. Ct.), 100 S. W. (2) 695; *Spamm* v. *City of Dallas* (Sup. Ct.), 235 S. W. 513; *Crossman* v. *City of Galveston* (Sup. Ct.), 247 S. W. 810. The query then is, may a citizen be deprived of the privilege of operating his automobile or deprived of the right to sell or encumber the same without regard to whether he may be liable in damages to any person resulting from an accident in which the automobile was involved? Under the Act a motorist may be driving his automobile in a careful and lawful manner, and at a lawful rate of speed, and he might be hit from behind by a drunken driver driving ninety miles an hour. The careful driver in such case would not be liable in damages to the drunken driver for damages under the established law of this state, and yet, under the Act involved his privilege of driving and his property could be taken without regard to the facts in the case establishing liability or non-liability to the drunken driver. Does the Act afford due process of law as is guaranteed by the Fifth and Fourteenth Amendments to the Constitution and Section 19 of Article 1 of our state Constitution? We say, "No". Due process of law refers to the general law, which hears before it condemns, proceeds upon inquiry, and only renders judgment after trial. *Armstrong* v. *Taylor*, 87 Tex. 598, 30 S. W. 440; *State* v. *Humble Oil & Refining Co.*, 263 S. W. 319.

The Supreme Court of the United States held, in *Reitz* v. *Mealey*, 62 S. Ct. 24, 314 U. S. 33, that a statute which authorizes the suspension of a driver's license for non-payment of a judgment is valid. That holding is certainly

consistent with due process of law because a person against whom a judgment has been rendered has been given his day in court and has had an opportunity to be heard on the question of his liability. The Act here involved denies such an inquiry on the question of liability, or right to be heard thereon, either before the Department or in the court on appeal.

It is argued by the Department, and held by the Supreme Court of Texas, that even though the Act does not provide for any character of hearing before the Department, due process is nevertheless afforded in that Section 2(b) provides that any order of the Department may be reviewed by an appeal to the courts. However, if the Act does not permit the granting or withholding of the penalties and suspension by the Department, based upon a determination as to liability or non-liability, can the court on appeal make inquiry into the question of liability and affirm or reverse the administrative order upon the basis of a finding of liability or non-liability? If this Act were susceptible of the construction, and if it were construed by our courts as authorizing the court on appeal from an order of the Department to reverse such order upon inquiry and a finding that the aggrieved party is not liable, then there might be some semblance of due process.

The Department makes its own independent determination as to the amount of security which must be deposited, and the motorist may not be heard thereon. Is he accorded due process merely because he may obtain a review of the Department's order by an appeal to the courts? Section 2(b) of Article II of the Act provides for an appeal to the courts and a de novo trial as to the propriety of the order. But what happens to the citizen, his privilege of driving and the right to sell or hypothecate his automobile pending final judgment of the court? Section 2(b) of Article II further provides: "*The court shall determine whether the filing of the appeal shall operate as a stay of any such order*

or decision of the Department." The decision of the court whether or not to stay the suspension order of the Department is apparently within his unbridled discretion. He may stay or not the enforcement of the suspension order, pending final judgment, according to his whim or fancy. No standard or criterion is laid down to control the trial judge in granting or withholding a stay. What is the plight of the unfortunate citizen appealing to the court to vacate or modify an order of the Department applying the penalties of the Act against him, if the trial court, according to his whim, prejudice, or fancy refuses to stay the enforcement pending final judgment? No appeal could be prosecuted from a refusal to stay the enforcement of the order because such refusal would clearly be interlocutory and non-appealable. He must wait six months, or a year, or maybe longer until his case can reach final judgment. In the meantime he may not drive his automobile nor any other automobile; he may not use it (even with a competent driver at the wheel) nor sell nor borrow money on it, and, if his livelihood depends upon the use of an automobile, disaster and financial ruin may result to him before his case may be tried. On the other hand, one of the more fortunate citizens upon whom the trial court may bestow his favor, by staying the order of the Department, may continue to drive and use his automobile, and until his case may become moot under the Act under the provisions of Subsection 1, Section 7, of Article III. The fact that the trial court, being an officer and agency of the state, may discriminate between citizens by his granting or withholding of a stay order, renders the Act invalid as being in contravention to the Fourteenth Amendment to the Federal Constitution, and would deny the equal protection of the law. It was held by the Supreme Court of Texas in *Stockwell* v. *State*, 221 S. W. 932, that the guaranties of due process require that administrative proceedings affecting property rights shall be subject to a review in the courts and to a judicial determina-

tion made on notice and a hearing. In other words administrative action which is made final, and not subject to judicial review, denies due process. It was further held by the U. S. Supreme Court in *Porter* v. *Investors Syndicate,* 52 S. Ct. 617, 286 U. S. 461, that a statute which, as ancillary to review of administrative action, gives complainant a stay until final decision, affords due process. If a stay is not automatic nor guaranteed, but within the unbridled discretion of the court, to grant or withhold as he sees fit, there is a denial of due process. Statutes purporting to deprive one of the right to a hearing before final disposition of his essential rights are invalid as in contravention of the due process clause; every man is entitled to his day in court before his rights can be finally disposed of, and he cannot be divested of this right by any act of the legislature. *Wilson* v. *Standefer,* 22 S. Ct. 384, 184 U. S. 415; *Olschewske* v. *Priester,* 276 S. W. 647.

The fallacy of the reasoning upon which financial responsibility statutes have been held constitutional by the appellate courts of other states, which statutes provide for suspension without regard to liability, is clearly demonstrated, we think, from the wording of the opinion in *Rosenblum, et al.* v. *Griffin, Commissioner of Motor Vehicles,* 89 N. H. 314, 197 Atl. 701, 115 A. L. R. 1367, by the Supreme Court of New Hampshire, relied upon by the Department in its brief herein, as follows:

> "From a practical standpoint, if there is fault for an accident, it is reasonable that suspension should follow and immediately. But provisional finding of fault is indecisive and much less is a charge or claim of fault. Unless in a case where the doctrine of res ipsa Loquitur might be invoked, an accident of itself is no evidence of liability for it, and a charge of liability has no tendency to prove it. *The determination of a contested claim of fault is usually after a substantial length of time subsequent to the accident. The development of the legislation in meeting the problem of prospective liability,*

either probable or possible, for an accident, has led to the final policy of ignoring it as a test of suspension."

Is it sufficient reason to justify a disregard for the requirement of due process that the determination of the question of liability of a motorist for damages *"is usually after a substantial length of time subsequent to the accident?"* Can a legislature pass a valid law under the police power, which will provide for the taking of property, and deny any inquiry into the liability for damages of the citizen whose property is taken from him, and justify a denial of hearing and inquiry before condemnation by simply *"ignoring it* (liability) *as a test of suspension"?*

Second Assignment of Error

(*Restated*)

The Supreme Court of Texas erred in sustaining the validity of the order of the Respondent issued against Petitioner, D. C. Gillaspie, in that Section 5 of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as applied to the Petitioner, D. C. Gillaspie, and deprives him of his property and the equal protection of the law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that, under the undisputed findings of fact of the trial court and under the established law of Texas, the Petitioner, D. C. Gillaspie, is not and cannot be held liable in damages to any person as a result of the collision involved but nevertheless, and in spite of his non-liability to any person in damages, he is deprived of his property under the terms of the law in question.

Statement and Argument under the Second Assignment of Error

The trial court having found as facts (R. 12-13) that Petitioner D. C. Gillaspie's automobile was being driven by

his minor son at the time of the accident, for his own personal pleasure and benefit, and not acting as agent or for the benefit of Petitioner, and such findings of fact being without dispute in the record, D. C. Gillaspie could not be held liable in damages to any person for any negligence of his son. The so-called "Family Purpose Doctrine" holds that the head of a family is liable in damages for the negligent acts of members of his family while operating the family automobile, but such doctrine of liability is not now and has never been the law in Texas. *Bluth* v. *Neeson,* 94 S. W. (2) 407; *Ener* v. *Gandy,* 158 S. W. (2) 989; *Trice* v. *Bridgewater,* 81 S. W. (2) 63; *Seinsheimer* v. *Burkhart,* 122 S. W. (2) 1063; *Sturtevant* v. *Pagel,* 130 S. W. (2) 1017.

It follows that to enforce the Act against D. C. Gillaspie, he not being liable in damages to any person, would be unreasonable and oppressive, and would violate the Fifth and Fourteenth Amendments to the Federal Constitution.

Third Assignment of Error

(Restated)

The Supreme Court of Texas erred in sustaining the validity of the orders of the Respondent issued against Petitioners in that Section 5(b) of Article III of the Texas Motor Vehicle Safety-Responsibility Law is void and invalid as to both Petitioners, and deprives them of their privileges and property and of the equal protection of the law, in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States in that said section 5(b) permits the Respondent Department of Public Safety to suspend the drivers licenses and motor vehicle registrations of Petitioners unless they deposit the amount of security as is fixed by the Department, and yet no standards or criteria are set forth to govern said Department in arriving at the amount of security to be required of Petitioners.

Statement and Argument under Third Assignment of Error

The Act sets forth no standards by which the Department is to be guided in arriving at the amount of security to be deposited. The only standard is that it shall be an amount which is "sufficient" in the judgment of the Department to satisfy any judgments for damages which may be recovered.

It is well established constitutional law that the Legislature may delegate to an administrative authority the right to make findings of fact upon which the enforcement of the law shall be based, but that the delegation of the administration of a law to an administrative authority, without setting forth standards and criteria to govern such board in enforcing the law and in making findings, constitutes a delegation of legislative power and violates Article III, Section 1, of the Constitution of Texas. *Trapp* v. *Shell Oil Co.*, 198 S. W. (2) 424; *Clark* v. *Briscoe Irr. Co.*, 200 S. W. (2) 674.

Here the Department has been delegated the power to determine the amount of security to be deposited to prevent a suspension and the application of the penalties provided by the Act. In order that this delegation of legislative authority shall not contravene our constitution the Act must furnish sufficient standards and criteria for the guidance and control of the Department in making such findings, in order that the Department may not discriminate between persons similarly situated and thus deny the equal protection of the law. If this act lays down no standard or guide but attempts to vest the determination of the amount of security according to the uncontrolled discretion and judgment of the Department it must be held invalid. We say that there are no standards or criteria provided by the Act, but that the Department may run rampant in the wide latitudes of an unbridled discretion. Is the standard or guide, "the amount of security which shall be sufficient in its judgment to satisfy any judgment", any standard at all? It

clearly is not. To illustrate the point, no definite and fixed amounts are provided as the amount of damages for personal injuries as in the Workmen's Compensation Law, where the compensation or damage is definitely fixed. The Department is left to conjecture that the loss of a finger resulting from an automobile accident would result in a judgment for $5 or $5,000. Today, in one case the Department might fix the amount of damage for the loss of a finger at $5. Tomorrow, in another case, it might fix the amount at $5,000. What is the criterion laid down to control the Department in determining what damages might be recovered if death resulted to a two year old child, with no earning capacity, and yet to be reared and educated? It may well be that the Department, by some proper investigation might determine the amount of property damage which could be recovered in a judgment, because the rules of law for the determination of property damage are well established. Damages for personal injuries, and injuries resulting in death, are however not subject to the same definite ascertainment as property damage. The Act contemplates that the Department shall consider damages resulting from personal injuries, in fixing the amount of security, for in Section 5(a) of Article III it refers to a "written agreement providing for the payment of an agreed amount in installments with respect to all *claims for injuries* or damages resulting from the accident". The very purpose for the requirement that definite standards shall be set forth to guide an administrative authority in the enforcement of a law is that it must be controlled and guided so as to enforce the law equally against all persons coming within its operation, and so as not to deny a person the equal protection of the law. Under this Act the employee of the Department making a determination as to the amount of security may decide that the amount should be $200, and another employee, making such determination in another case, but upon

identical facts and circumstances, could fix the amount at $5,000, but the citizen involved in the latter case could not establish any discrimination against himself because he could not show that any standard or criterion had not been followed.

Concluding Remarks

An article appearing in the November 1953 issue of the Texas Bar Journal, dealing with the act in question, by an eminent Texas lawyer, will serve, in part, to illustrate the character of "fuzzy minded" judicial reasoning which must be resorted to if the act in question is to be upheld as affording due process and equal protection of the law. In one of such articles, T.B.J., p. 692, the following statement is made:

> "Incidentally, the Act has been criticized by some because of its application to a person obviously not at fault. Suppose, for instance, that Mr. Jones has stopped his car and is waiting for a red light, when Mr. Smith hits him from the rear. If Jones has no insurance policy covering the accident, he must apparently deposit security with the Department of Public Safety to the extent of Smith's damage, even though everybody involved knows that he will not be held liable, and Smith is not even making claim against him. *The Department is so construing the Act, and has the support of the case I shall cite.*
>
> It may be that the Department should not require security under such circumstances. The Act says that "the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner." *Perhaps the Department of Public Safety should not require a deposit of security in this situation, but rather, should take the position that in its opinion the amount which shall be necessary to satisfy judgment is none since there is obviously no liability.*"

The plain and unequivocal terms of the act, Section 5(b) of Article III, provides that:

> *"The Department shall . . . suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident . . . unless such operator or owner or both shall deposit security in the sum so determined by the Department;".*

The previous sub-division (a) of said Section 5 provides that:

> *"the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner."*

The plain mandate to the Department is that it *must suspend against every operator and owner of every motor vehicle* involved in *every accident* unless *every owner* and operator shall deposit the security in the amount determined to be sufficient to satisfy all judgments which might result. Clearly, it is not intended by the foregoing language that the Department may determine that there is no liability and thus escape its plain duty to fix ample security to satisfy all judgments, in the event a Court might differ with the conclusions reached by the Department that there is no liability. It is impliedly stated in the article in the Texas Bar Journal, supra, that the Department, in its enforcement of the act, is now construing it to mean that if the Department determines that there is no liability it is not required to fix any amount of security. We have no way of knowing, and this record does not reflect, whether that may be a fact. It is the earnest contention of these Petitioners that the law denies due process because it fails to require a determination of liability as a prior condition to suspension. It would indeed be in-

teresting if counsel for the Department, who are in a position to ascertain the present policy in that regard, would inform this Court as to whether the Department is making determinations of liability and whether it is declining to fix or require any security in those cases in which it determines that there is no liability. If the Department is so doing in some or all cases it is certainly doing so without sanction of this law; and such a policy would clearly constitute an unconstitutional and discriminatory enforcement of the law in favor of those whom the Department determines to be not liable and against those whom the Department decides are liable. The evil which must be constantly avoided in the administration of law by administrative bodies is discrimination in the application of the law based on reasons and motives known to the administrator but unknown to the persons affected.

Apart from all other considerations can any lawyer say that the *use* of an automobile on the public highways is a mere privilege? Obviously, the actual driving or manipulation of an automobile should be considered a privilege only, which could be granted or withheld in any case in the light of the best welfare of the public at large. But an automobile is not, in itself, an unlawful property, such as a drug or gambling device. It is a recognized product of lawful commerce and the subject of ownership; and ownership of property, in the constitutional sense, carries with it the use of the property in legal ways. It may be held that the State may deprive one of his personal right to drive an automobile, arbitrarily and without any semblance of due process, but can it deprive him of the *benefits available from the use of his automobile* in the hands of a competent and licensed driver, except by due course of the law of the land? This law constitutes an insidious encroachment upon the constitutional guarantee of due process. The automobile of the

Petitioner, D. C. Gillaspie, should not be banished from the highways without due process of law.

There can be no finding of fault with a compulsory liability insurance law such as exists in Massachusetts. No automobile can be operated on the highways of that State unless the owner is possessed of such insurance. Under that character of law there can be no discrimination. The law at bar seeks to exempt from its operation certain classes of persons, such as the owners of automobiles legally parked and automobiles involved in collisions when they are being driven without the consent of the owner. It is clearly reasonable that no penalties should be applied against those classes of owners. D. C. Gillaspie, under the undisputed facts and the established law of Texas, cannot be liable or responsible to any person in damages for the collision involved. Is it not equally reasonable that he should not be penalized any more than an owner whose automobile has been stolen and is involved in a collision while being driven by the thief? But he is penalized by this law. It is unreasonable and oppressive and should be stricken down.

Respectfully submitted,

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(1931)

Office - Supreme Court,
FILED
MAR 10 1954
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 495

D. C. GILLASPIE, Individually and as Next Friend of JAMES D. GILLASPIE, a Minor,
Petitioner,

v.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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OCTOBER TERM, 1953

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D. C. GILLASPIE, Individually and as Next Friend of JAMES D. GILLASPIE, a Minor,
Petitioner,

v.

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Comes now the Respondent Department of Public Safety of The State of Texas, acting by and through John Ben Shepperd, Attorney General of The State of Texas, and files this its brief in opposition to Petitioner's Petition for Writ of Certiorari to the Supreme Court of Texas, and would respectfully show the Court:

OPINIONS BELOW

The Opinion of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas is reported in 254 S.W. 2d 180. The Opinion of the Supreme Court of Texas, which upheld the Opinion of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas is reported in 259 S.W. 2d 177.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

STATEMENT OF THE CASE

On January 19, 1952, James D. Gillaspie, a fifteen year old minor, was operating a motor vehicle owned by his father, D. C. Gillaspie, Petitioner herein. While operating said motor vehicle on said date, James D. Gillaspie was involved in an accident with two other motor vehicles operated by Ernest A. Wallis, Jr., and Raymond Moeller, respectively, at the intersection of Olmos Drive and Blanco Road in the City of San Antonio, Bexar County, Texas. At the time of the accident neither James D. Gillaspie nor D. C. Gillaspie were possessed of public liability insurance.

The accident was reported to the Department of Public Safety within the time and manner required by Section 4, Article 6701h, Vernon's Civil Statutes. The accident report disclosed that property damages in excess of $100.00 and personal injuries resulted

from the accident, therefore bringing the accident within the jurisdiction of Article 6701h, Vernon's Civil Statutes.

After twenty days after receipt of the accident report, the Department of Public Safety did not have on file sufficient evidence that Petitioners James D. Gillaspie or D. C. Gillaspie (1) had been released from liability, (2) had been finally adjudicated not to be liable, (3) had executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims resulting from the accident, (4) had properly completed Form SR-21 showing that a liability policy was in effect at the time of the accident affording insurance coverage, or (5) had qualified as self insurers. And furthermore, they did not come within any of the exceptions to Section 6 of the Act by showing (1) that no injury or damage was caused to the person or property of any one other than the operator or owner, (2) that the vehicle was legally parked, or (3) that it was being operated without the expressed or implied permission of the owner.

Petitioners D. C. Gillaspie and James D. Gillaspie, not having complied with Section 5 of the Act within the twenty day period, and not having shown that they came within any of the exceptions of Section 6 of the Act, the Respondent proceeded to determine the amount of security which would be sufficient in its opinion to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against them. From garage estimates and doctor reports submitted by the other parties in-

volved in the accident, the Respondent determined that security in the sum of $2,181.72 would be sufficient.

On March 14, 1952, which was at least ten days prior to the 60th day after receipt of the accident report, Petitioner D. C. Gillaspie was notified by order of the Department (R. 16) that unless he deposited security in the sum of $2,181.72, all his Texas Motor Vehicle Registration Certificates and Plates would be suspended as of April 2, 1952. Petitioner James D. Gillaspie, by separate order dated March 14, 1952, was notified by order of the Respondent (R. 14) that unless he deposited security in the sum of $2,181.72 his Texas Operator's, Commercial Operator's, and Chauffeur's licenses would be suspended as of April 2, 1952.

Security was not deposited by April 2, 1952, and therefore the Respondent, complying with the mandatory requirement of Section 5 of the Act, suspended the motor vehicle registrations of Petitioner D. C. Gillaspie, the owner, and the operator's license of Petitioner James D. Gillaspie, the operator.

Under Section 2(b) of the Act, both D. C. Gillaspie and James D. Gillaspie appealed from the respective orders of the Respondent to the County Court at Law No. 2 of Bexar County, Texas (R. 1-6) and the Court granted them a stay order, as provided under said Section 2(b) against the enforcement of the orders by the Respondent until the cause could be heard on the merits (R. 6-7).

At the trial of the cause, without a jury, a trial de novo was had before the Court and the Court en-

tered judgment reversing the order of suspension against D. C. Gillaspie registrations, permanently enjoined the Respondent from issuing any further orders against D. C. Gillaspie (R. 10-12) and in its findings of fact found that James D. Gillaspie was driving D. C. Gillaspie's automobile with D. C. Gillaspie's implied consent but was not acting at the time as agent for D. C. Gillaspie (R. 12-13). In its conclusions of law the trial court found that D. C. Gillaspie was not responsible for the damages which may have been incurred by James D. Gillaspie (R. 13). As to James D. Gillaspie, the trial court upheld the Respondent's order but reduced the security to the amount of $1,190.00 (R. 10-12).

The Respondent Department of Public Safety duly appealed to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas that part of the trial court's judgment reversing and enjoining the enforcement of Respondent's order against Petitioner D. C. Gillaspie on the grounds that the trial court erred in allowing evidence on the fault question, and that neither the Respondent prior to suspension, nor the trial court on an appeal of the Respondent's order, could decide the negligence issue. By cross-appeal, James D. Gillaspie appealed to said Court of Civil Appeals from that part of the trial court's order modifying, and as modified affirming the Respondent's suspension order issued against him.

The Court of Civil Appeals reversed that portion of the judgment of the trial court which held invalid the Respondent's suspension order against D. C. Gillaspie, dissolved the injunction and decreed that the

Respondent's order against D. C. Gillaspie was in full force and effect except that the amount of security was reduced to $1,190.00. The Court of Civil Appeals affirmed the trial court's judgment against James D. Gillaspie (R. 17-23). The official report of the Opinion of the Court of Civil Appeals is *Department of Public Safety v. Gillaspie*, 254 S.W. 2d 180.

Petitioners then obtained an appellate review of the decision and judgment of the Court of Civil Appeals by the Supreme Court of Texas. On June 17, 1953, the Supreme Court of Texas, through Justice Smedley ,handed down its decision affirming the judgment of the Court of Civil Appeals (R. 31-42). The official Opinion of the Supreme Court of Texas is reported as *Gillaspie v. Department of Public Safety*, 259 S.W. 2d 177. The Supreme Court of Texas denied and overruled Petitioner's Motion for Rehearing on July 15, 1953 (R. 42). On August 4, 1953, the Supreme Court of Texas entered an order staying the enforcement of its judgment against the Petitioners to allow them time in which to petition this Honorable Court for a writ of certiorari (R. 43). The Petitioners, after two extensions of time, filed their Petition for Writ of Certiorari December 12, 1953. On January 15, 1954, the Honorable Hugo L. Black, Associate Justice of this Court, extended the time for filing Respondent's Brief in Opposition to and including February 20, 1954, and again on February 17, 1954 granted another extension to and including March 12, 1954. Respondent's Brief in Opposition is filed and docketed herein within the extended time.

QUESTIONS PRESENTED

Respondent's Counter Point One to Petitioner's Points One and Two

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act required the Respondent to suspend Petitioners' License and Registration without a prior determination of fault and that such requirement did not deprive Petitioners of their property without due process of the law and equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

Respondent's Counter Point Two to Petitioner's Points One and Two

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act did not deprive Petitioners of their property without due process of law and the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States in suspending their respective licenses and registration without affording a hearing on their liability prior to suspension.

Respondent's Counter Point Three to Petitioner's Point One

The Supreme Court of Texas correctly held the Texas Motor Vehicle Safety Responsibility Act guaranteed to Petitioners due process of law and equal protection of the law under the Fourteenth Amend-

ment of the United States Constitution by providing for a hearing before the Respondent upon request, an appeal with a trial de novo, and a stay pending final hearing of the appeal.

Respondent's Counter Point Four to Petitioner's Point One

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act does not deprive Petitioners of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution in prohibiting the Transfer of Registration of a suspended vehicle until the Respondent is satisfied that such transfer is proposed in good faith and not for the purpose or with the effect of defeating the purpose of the Act.

Respondent's Counter Point Five to Petitioner's Point Three

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act set a sufficient standard to guide the Department in determining the amount of security required and did not deprive Petitioners of their property without due process of law and the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

STATUTE INVOLVED

The statute involved in this appeal is The Texas Motor Vehicle Safety-Responsibility Act, Article

6701h, Vernon's Civil Statutes of Texas, passed by the 52nd Legislature as House Bill 219, Chapter 498. The Act is commonly referred to as the Texas Safety-Responsibility Law.

The Texas Law is patterned on the Act approved by the National Conference of Commissioners on Uniform State Laws, and in addition to having the older "penal" and "civil" provisions, has the "security" provision, and Article III of the Act sets out the "security" provision and Article IV sets out the "penal" and "civil" provisions.

The purpose of the Act as stated in the caption is "to encourage safer use of motor vehicles on the streets and highways of Texas and to deny the privilege of driving to reckless and financially irresponsible persons." The emergency clause recites that "thousands of motor vehicles are being operated on the highways by financially irresponsible owners and drivers who are causing untold loss of life and property and who are failing to pay for the damages thus caused," and "It is the intent and purpose of this Act to provide a means of protecting the conscientious and thoughtful motorist, thereby benefiting all the citizens of this State."

The Department of Public Safety is the designated state enforcement agency. The Department is given rule making power and is required to provide for hearings upon request of persons aggrieved by orders or acts of the Department. Any order or act of the Department is subject to review upon appeal by the complaining party within ten days to the County Court, County Court at Law, or District Court having jurisdiction. The trial is de novo with the burden

upon the Department, and the substantial evidence rule does not apply. The court shall determine whether the filing of an appeal shall operate as a stay of any order or decision of the Department, and, in disposing of the case, to modify, affirm, or reverse the order or decision of the Department in whole or in part. A trial by jury may be had on application. (Sec. 2.) Section 41 provides that the Act "shall not be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law."

Article I of the Act contains certain definitions. Article II provides for the administration of the Act and for the appeal procedure above outlined. Article III provides the "security" provision requiring security following an accident and is that portion of the law under which petitioners in this case have been suspended and which will be further outlined below. Article IV contains the "civil" provision requiring financial responsibility for the future for non-payment of judgments, and the "penal" provision requiring financial responsibility for the future after convictions of certain driving laws, and is not applicable to this case except for Section 21 thereof, which contains the definition of a motor vehicle liability policy. Article V provides for penalties for violation of the Act, provides for the surrender of suspended licenses and registrations and prohibits the transfer of registrations or the registration of suspended vehicles until the Department is satisfied that they are bona fide and not to defeat the Act or its purpose. Article VI contains some general provisions excepting public vehicles and certain carriers, providing for self in-

surance, providing an assigned risk plan, and providing for certain fees and appropriations, etc.

The application of Article III, the "security" provision, requiring security after an accident, is as follows:

The operator of any motor vehicle involved in an accident, regardless of blame or liability, must report the accident to the Department of Public Safety within ten days,

(1) if any person is killed,

(2) if any person is injured, or

(3) if damage to the property of any one person, including himself, is in excess of $100.00. Where the operator is physically unable to report, the owner must file the report within ten days after learning of the accident. Failure to report an accident subjects the person to a fine and suspension of his driver's license. Any person filing a report containing false information is subject to fine and imprisonment.

After receipt of such accident report, the Department must determine within 20 days the amount of security which will be sufficient in its opinion to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner. In determining the amount of security sufficient to cover the probable damages, the Department cannot require more than the basic limits of a motor vehicle liability policy of $5,000.00 for bodily injury or death of one person, $10,000.00 for two or more, and $5,000.00 property damage for any one accident.

The Act makes it mandatory that within sixty days after receipt of the accident report the Department must suspend the license of the operator, and all motor vehicle registrations of each owner. The operator and owner must be given ten days' notice of such suspension prior to its effective date and the notice must state the amount of security required. However, Section 5(a) of the Act provides that security and suspension are not required and that the operator and owner have complied with the Act if they can show:

(1) They have been released from liability;

(2) They have been finally adjudicated not to be liable;

(3) They have executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident;

(4) They had in effect at the time of the accident a motor vehicle liability policy covering the operation of the vehicle; or

(5) They qualify as self insurers.

Section 6 of the Act sets out four specific exemptions where the requirements as to security and suspension in Section 5 above discussed do not operate. These four exemptions apply:

(1) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

(2) To the operator or the owner of a motor vehicle legally parked at the time of the accident;

(3) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission.

Section 7 provides that any person's driver's license or motor vehicle registration suspended pursuant to the provisions of Section 5 shall remain so suspended and shall not be renewed, nor shall any driver's license or automobile registration be issued to such person until:

(1) Such person deposit or there shall be deposited on his behalf the security required under Section 5; or

(2) One year after the accident satisfactory evidence is filed that no action for damages has been instituted; or

(3) Satisfactory evidence has been filed of (a) a release from liability, or (b) a final adjudication of non-liability, or (c) a duly acknowledged written agreement providing for the payment of an agreed amount in installments.

Section 8 of Article III provides for reciprocal operation of this "security" provision with other States who adopt the measure; Section 9 sets out the form and amount of security; Section 10 provides for the custody, disposition, and return of security; and Section 11 provides that neither the accident report nor the action taken by the Department shall be

referred to in any way, nor be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

A report from J. B. Alderdice, Chief of the Safety Responsibility Division of the Department of Public Safety of Texas, shows that in 1952 the Department handled 73,000 accident cases that came within the jurisdiction of the Safety Responsibility Act, out of which number, approximately 7,300 motorists were suspended, and in 1953, handled 70,000 accident cases that came within the jurisdiction of the Act, out of which number approximately 7,000 motorists were suspended. That as of January 31, 1954, the Department had in its trust fund security deposits under the Act in the amount of $382,260.33 and that up to date in 3515 cases security was deposited. That the psychological effect by the adoption in Texas of the Safety Responsibility Law has apparently resulted in the increase in the number of motorists who voluntarily became financially responsible. It was estimated that prior to the enactment of the Texas law which went into operation January 1, 1952, only 15% of the automobiles of Texas were insured against public liability; that after the Act has been in effect only two years, between 50% and 60% of all privately owned motor vehicles are covered with public liability insurance. New York and other States which have had Safety Responsibility Laws in operation for a number of years show that between 75% and 85% of all motorists are covered with public liability insurance and there is no reason to doubt that the percentage of coverage of motorists in Texas will increase to these percentages. Furthermore, because of the great number of people complying with

the law by filing release from liability and settlement agreements shows that the Act is serving its purpose in compensating the injured motorists using the highways of the State of Texas. Without a doubt the legislative purpose set forth in the caption of the Act and the legislative intent made known in the emergency clause have been fulfilled.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW INVOLVED

Under Supreme Court Rule 38(5) this Honorable Court indicated the character of reasons which it would consider in granting a review on writ of certiorari.

The Petitioners herein have not brought themselves within the purview of this rule by showing that the Supreme Court of Texas has decided a federal question of substance not heretofore determined by this Court, or that the Supreme Court of Texas has decided a federal question in a way probably not in accord with applicable decisions of this Court.

Petitioners in this case seek to attack as invalid certain provisions and requirements of the Texas Motor Vehicle Safety-Responsibility Act on the grounds that they are being deprived of their property without due process of the law and equal protection of the law under the Fourteenth Amendment of the United States Constitution.

In order to show to the Court that this Honorable Court has heretofore determined the questions herein presented by Petitioners, and that the Supreme Court of Texas rendered its judgment in conformity therewith, it is necessary to briefly review to a limited

extent the history of Safety Responsibility Legislation in this country and the decisions of this Honorable Court applicable thereto.

Need for Safety Responsibility Legislation

Because of the high toll of highway deaths and injuries and the staggering amount of property damage resulting from the operation of automobiles, the problem of compensation for victims of highway accidents has urgently and continually pressed for attention since automobiles first came into use in volume.

While the general substantive laws, both statutory and common law, lay down fundamental rules which award compensation on a fair basis to persons who have been damaged because of the negligence of others, many cases occur in which the enforcement of such an award would be impossible because of the lack of ability to pay damages on the part of the person found at fault. Something more than the general laws of negligence seemed to be required in order to give the accident victim a favorable prospect of enforcing the award which a court would give him in a suit for damages.

Massachusetts Adopts Compulsory Insurance

The importance of this problem being recognized, the first law directly pointing at this situation was passed by Massachusetts in 1925, to become effective in 1927. Instead of attempting to encourage motorists to protect themselves against future liability and thereby protect potential victims of accidents in

which they may be involved, the Massachusetts law made mandatory the obtaining of insurance or the posting of a liability bond or money as a prerequisite to a motorist being permitted to operate a motor vehicle on the highways.

Ex Parte Poresky Upholds Compulsory Insurance

In 1933, in the case of *Ex Parte Poresky*, 290 U.S. 30, this Honorable Court upheld the Massachusetts compulsory insurance statute on the constitutional authority of the State, acting in the interest of public safety.

In upholding the constitutionality of the Massachusetts Compulsory Insurance Act, this Court cited *Opinion of the Justices*, 251 Mass. 569, 147 N. E. 681; and *Opinion of the Justices*, 81 N.H. 566, 129 Atl. 117. Both of these cases upheld the constitutionality of compulsory insurance as a prerequisite to the use of the highways by motorists on the principle that a license to operate an automobile on the public highways and streets owned and controlled by the State and its subdivisions is a privilege and not a property right and therefore is subject to the reasonable regulation of the State under its police power for the safety and welfare of the citizens of the State.

Some States Adopt Older "Penal" and "Civil" Provisions

Other States attempted more of an indirect approach to the problem. The original bills and later redrafts of financial-responsibility legislation of

some of the other States prior to 1943 included two basic provisions: *first*, what may be called a "penal" provision; and *second*, what may be referred to as a "civil" provision.

Briefly, the penal provision was designed to come into operation upon conviction of a motorist for a serious violation of a motor vehicle law. When, under the driver's license law, a license is suspended for such an offense, the Safety-Responsibility Law provides that the driving privilege and registrations of the person involved should not be restored until the expiration of the period of suspension, and not then unless proof of financial responsibility to cover future accidents is deposited with the State. This proof of financial responsibility would be in form of a bond, money, or insurance. Its purpose would be to provide a fund out of which judgments, thereafter entered as the result of automobile accidents for which the motorist might be found liable, would be satisfied.

The civil type of provision of safety-responsibility laws is one which goes into operation upon the failure of a motorist to satisfy, within a limited number of days, any judgment for damages entered against him as a result of an automobile accident. This judgment would be one in any amount, and would be reported to the person charged with administration of the law. Thereupon, the driver's license and registrations of the person involved would be suspended so long as the judgment remained unpaid. Even after the satisfaction of the judgment, the suspension would continue unless the person filed proof of financial responsibility as required under the penal type of provision.

These two early basic provisions, which are still retained in a majority of the safety-responsibility bills, are similar in their two basic objectives. It was hoped that a large number of reckless and financially irresponsible motorists would be ruled off the road by suspension of their operating privileges and registrations, thereby not only cutting down accidents, but making it more likely that those persons who used the roads would be those who were more able to pay damages assessed against them. Also, the law was designed to be a stimulus to motorists generally to secure liability insurance or otherwise make themselves financially responsible with respect to future accidents and thereby avoid the burden and inconvenience which might be incurred if they should be involved in accidents and not be able to pay judgments for damages. It was believed and has been proved that many motorists prefer to take advance precautions with respect to such possible liability.

Reitz v. Mealey Upholds "Civil" Provisions

In 1941, the case of *Reitz v. Mealey*, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 21, was decided by this Honorable Court involving the "civil provision" of the New York Safety Responsibility Act. Section 94-b of the New York Act provided for suspension of the operator's license and registration certificate of any person if a judgment against him for injury to person or property resulting from the operation of a motor vehicle, be not paid within fifteen days, upon certification of a judgment, its finality, and nonpayment to the Commissioner by the County Clerk.

The act directed the Commissioner to suspend the license for three years unless, in the meantime, the judgment was satisfied or discharged, except by a discharge in bankruptcy. The suspension continued after the expiration of the three years or satisfaction of the judgment, until the licensee gave proof of his ability to respond in damages by the procurement of insurance, the giving of a bond, or the posting of a desposit. In 1936 the Act was amended providing that if the creditor consented in writing, the debtor may be allowed a license and registration for six months from the date of such consent and thereafter until the consent is revoked in writing, if proof of ability to respond to damages was furnished. In 1939 a further amendment was added making it the duty of the county clerk to certify the judgment only upon written demand of the creditor or his attorney. The Act was attacked on the grounds that Section 94-b of the New York Law violated the due process clause of the Fourteenth Amendment and was void by Sec. 17 of the Bankruptcy Act.

Mr. Justice Roberts delivered the Opinion of the Court with Mr. Justice Douglas delivering a dissenting opinion joined by Mr. Justice Black, Mr. Justice Byrnes and Mr. Justice Jackson. The dissent went only to charge that the act violated Section 17 of the Bankruptcy Act, a point which does not concern us in this appeal. In upholding the constitutionality of the Act this Honorable Court said:

> "The purpose of the statute is clear. It is not a condition of the grant of license that the applicant shall have insurance. Instead, the policy of the State is that, if a driver has an accident

in respect of which a judgment convicts him of negligence, his license will be suspended and so remain unless he furnishes proof of his ability to respond for damage thereafter caused; and that, in any event, it will be suspended for three years unless, in the meantime, the judgment is satisfied or the creditor consents that the license be reinstated and remain in force.

"*First.* The statute, leaving out of consideration the amendments, is not obnoxious to the due process clause of the 14th Amendment. The use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice is to register ownership of outomobiles and to license their drivers. Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. Some States require insurance, or its equivalent, as a condition of the issue of a license. New York chose to obtain the same end by providing for the revocation or suspension of a license if the holder is adjudged guilty of negligent driving. Section 94-b permits the restoration of the license upon payment or satisfaction of the judgment. As the court below has held, the effect of the statue as it stood prior to the amendment of 1936 was to make the license privilege a form of protection against damage to the public inflicted through the licensee's carelessness.

"*Second:* Prior to the amendment of 1936, the license could not be restored until three years had expired from its suspension, unless the judgment were paid or discharged, except by a discharge in bankruptcy, and unless, also,

the licensee furnished proof of his ability to respond in damages for any future accident.

"If the statute went no further, we are clear that it would constitute a valid exercise of the State's police power not inconsistent with § 17 of the Bankruptcy Act. The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely, but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary bankruptcy, and, accordingly the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety."

Here, again, in upholding the "civil provision" of Safety-Responsibility legislation, as was done in upholding "compulsory insurance" in the Massachusetts case, this Court based its holding upon the principle that a license or permit to drive an automobile on the public highways and streets is a privilege and not a property right and such privilege is subject to reasonable regulation under the police power of the states in the interest of public safety and welfare.

New "Security" Provision Adopted

The "civil" and "penal" provisions have been retained in the Safety-Responsibility laws; however, in 1937, a new provision incorporating a new prin-

ciple was added. This is known as the "security" provision, which has hereinbefore been explained and the provision herein involved.

In substance, the "security" provision places certain consequences upon a motorist being involved in an accident, irrespective of recklessness or violation of motor vehicle laws, and regardless of whether any suit for damages has been brought by any other party. In 1937, New Hampshire was the first to pass a "security" type of requirement and now all States have some form of Safety-Responsibility laws with forty-one having the new "security" type provision. The chief advantage of the new security provision over the older types of civil and penal provisions which are still retained is that it is not necessary for claimants to spend time and money in obtaining noncollectible judgments in order to put the law into operation against the delinquent motorist.

Texas Supreme Court Follows Ex Parte Poresky and Reitz v. Mealey

The security provision of safety-responsibility legislation has never been passed upon by this Honorable Court; however, in upholding the constitutionality of the provision against the attacks made by Petitioners herein the Supreme Court of Texas based its decision in *Gillaspie v. Department of Public Safety*, 259 S.W. 2d 177, upon the theory of this Honorable Court in the cases of *Ex Parte Poresky* and *Reitz v. Mealey*, when the Court, speaking through Justice Smedley, said:

> "Points of error in both applications present the contention that the Act in authorizing sus-

pension of licenses and registrations without first a determination of the question of liability violates constitutional guarantees of due process and equal protection of the law.

"Fundamental in the consideration of this contention and other points attacking the constitutionality of the Act is the settled principle that a license or permit to drive an automobile on the public highways and streets is a privilege and not property or a property right. The privilege is subject to reasonable regulations under the police power in the interest of the public safety and welfare, and such reasonable regulations of the privilege made in that interest, may properly be committed to an administrative body or agency for enforcement, especially when judicial review is provided; and such regulations are not regarded as in denial of due process. Taylor v. State, 151 Tex. Cr. R. 568, 209 S.W. 2d 191; Reitz v. Mealey, 314 U.S. 33, 62 S.Ct. 24, 86 L.Ed. 21; Prichard v. Battle, 178 Va. 455, 17 S.E. 2d 393; Ballow v. Reeves, Ky., 238 S.W. 2d 141; State v. Stehlek, 262 Wis. 642, 646, 56 N.W. 2d 514; Larr v. Dignan, 317 Mich. 121, 26 N.W. 2d 872; Heart v. Fletcher, 184 Misc. 659, 53 N.Y.S. 2d 369; Jones v. Marsh, 148 Tex. 362, 367, 244 S.W. 2d 198."

Therefore, the Petitioners herein have not brought themselves within Supreme Court Rule 38(5) by showing that the Supreme Court of Texas has decided a federal question of substance not heretofore determined by this Court, or has decided a federal question in a way probably not in accord with applicable decisions of this Court.

We will now turn to the questions presented by the Petitioners and show that not only has the Supreme

Court of Texas decided the questions in conformity with applicable decisions of this Honorable Court but also followed the familiar rule of statutory construction that the Texas Legislature was presumed to be aware of the judicial interpretation given to a statute by the states from which it was borrowed and intended to adopt that construction. *Travelers Insurance Co. v. Marshall*, 76 S.W. 2d 1007; *Napier v. Mooneyham*, 94 S.W. 2d 564; 39 Texas Jurisprudence 264.

RESPONDENT'S COUNTER POINTS ONE, TWO AND THREE RESTATED

Respondent's Counter Point One to Petitioner's Points One and Two (Restated)

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act required the Respondent to suspend Petitioners' License and Registration without a prior determination of fault and that such requirement did not deprive Petitioners of their property without due process of the law and equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

Respondent's Counter Point Two to Petitioner's Points One and Two (Restated)

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act did not deprive Petitioners of their property without due process of law and the equal protection of the law in violation of the Fourteenth Amendment to the

Constitution of the United States in suspending their respective licenses and registration without affording a hearing on their liability prior to suspension.

Respondent's Counterpoint Three to Petitioner's Point One
(Restated)

The Supreme Court of Texas correctly held the Texas Motor Vehicle Safety Responsibility Act guaranteed to Petitioners due process of law and equal protection of the law under the Fourteenth Amendment of the United States Constitution by providing for a hearing before the Respondent upon request, an appeal with a trial de novo, and a stay pending final hearing of the appeal.

STATEMENT, ARGUMENT AND AUTHORITIES UNDER RESPONDENT'S COUNTER POINTS ONE, TWO AND THREE

The first three questions presented are so closely related that the Respondent has grouped them together for the purpose of argument.

Taking these three questions in logical sequence, the first question presented is whether the Respondent Department of Public Safety of Texas is required to determine the question of liability prior to suspension, and whether the trial court can allow a party on an appeal from a suspension order to produce evidence as to his non-liability.

Section 5(b), Article 6701h, Vernon's Civil Statutes, provides, in part, as follows:

> "The Department *shall*, within sixty (60) days after the receipt of such report of a motor

vehicle accident, *suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident*, unless such operator or owner or both shall deposit security in the sum so determined by the Department; provided, notice of suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of suspension." (Emphasis supplied)

The above language of the Act makes it mandatory that the Respondent suspend the license of the operator and registrations of the owner of a vehicle in any manner involved in an accident, if the parties have not complied with the Act in the manner provided and do not come within any of the exceptions and do not deposit security.

The scope of the Safety-Responsibility law does not place upon the Respondent the burden of proving the liability or non-liability of everyone who has become involved in an accident coming within the jurisdiction of the law.

The injured or damaged party is not a party to the Respondent's suspension proceedings, and therefore, if fault was determined, he would not have an opportunity to present his case. It might be possible that fault might be placed differently by a court or jury finding in a civil action for the recovery of damages, thereby preventing the act from benefiting the person it intended to benefit. Furthermore, if the trial court on appeal from an order of the Respondent allowed the suspended party to offer evidence on the absence of fault on his behalf, as was done in the trial of this cause, the court is allowing

an Ex Parte proceeding without giving the other parties to the accident an opportunity to prove that the suspended party was at fault and have the Respondent's order enforced on their behalf. If fault was allowed to be determined on appeal, the Respondent would be a party to every damage suit in the State of Texas. It is an inherent right of every person to counsel of his own choosing to fight his court battles for him, and to a large extent that right would be deprived.

The fault of the parties may be determined in a separate suit between the parties, in which suit the parties may produce full evidence in placing fault. This was contemplated by the Act by providing in Section 5(a) that one of the methods of complying with the Act is producing evidence of an adjudication of non-liability in a separate civil action.

Although the Texas Motor Vehicle Safety-Responsibility Act is new in Texas, the State in the exercise of its right to reasonable regulation of highways, has long required advance financial security in case of motor vehicles for hire in the total absence of fault. Such a regulation is settled and beyond dispute. *Packard v. Banton*, 264 U. S. 140, 44 S. Ct. 257, 68 L. Ed. 596; See Note, 22 A.L.R. 230; Art. 911B, Sec. 13, Vernon's Ann. Civ. Stats. Quare, is there a greater need for regulation of motor vehicles for hire than there is for private automobiles in view of the appalling number of deaths and injuries on the highways of the State of Texas every year resulting from accidents? The question answers itself.

There being no other Texas decisions bearing di-

rectly on this case, and this case being one of first impression before the Texas Courts, and hence the guide for future decisions under the Texas Act, it was necessary that the Texas Courts look to the decisions of sister states for guidance in rendering their decision.

In a recent Kentucky case, *Ballow v. Reeves, et al.*, 238 S. W. 2d 141, this very point was before the Supreme Court of Kentucky, and the Court expressed its opinion in the following words:

> "The question of negligence has nothing to do with the matter. The requirement of financial responsibility does not in any sense predetermine the question of liability, which could only be decided in a judicial proceeding. It simply furnishes an added protection to the public and better assures the safety of our highways, and is not dependent upon the operator's skill or lack of it. The statute is not unreasonable in failing to require a showing of negligence prior to suspension of the license. See Ohlson v. Mealey, 179 Misc. 13, 37 N.Y.S. 2d 123, and Rosenblum et al. v. Griffin, Com'r. of Motor Vehicles, 89 N. H. 314, 197 A. 701, 115 A.L.R. 1367."

Chief Justice Allen, speaking for the New Hampshire Supreme Court in *Rosenblum et al. v. Griffin, Commissioner of Motor Vehicles*, 89 N. H. 314, 197 Atl. 701, 115 A.L.R. 1367, had this to say on the Commissioner's determining the fault issue under the New Hampshire Safety-Responsibility Law:

> "From a practical standpoint, if there is fault for an accident, it is reasonable that suspension should follow, and immediately. But provisional finding of fault is indecisive and much less is a

> charge or claim of fault. Unless in a case where the doctrine of res ipsa loquitur might be invoked, an accident of itself is no evidence of liability for it, and a charge of liability has no tendency to prove it. The determination of a contended claim of fault is usually after a substantial length of time subsequent to the accident. The development of the legislation in meeting the problem of prospective liability, either probable or possible, for an accident, has led to the final policy of ignoring it as a test of suspension."

Another case directly in point is *Ohlson v. Mealey*, 37 N.Y.S. 2d 123, where Justice Froessel, speaking for the Supreme Court of New York, did not waste words in holding:

> "This language is obviously mandatory in character. The statute speaks of a motor vehicle 'in any manner involved' regardless of who may be negligent. The Commissioner is given no discretion to pass upon any question of negligence or freedom from negligence."

Citing, but without further quoting from them, this same point was raised in the following cases and it was uniformly held that the administrative agencies charged with the administration of the laws could not determine the fault question. *Larr v. Dignan*, 317 Michigan 121, 26 N. W. 2d 872; *Doyle v. Kahl*, 46 N. W. 2d 52 (1952).

In following the line of reasoning in the foregoing arguments and authorities, it is clear beyond dispute that the Respondent could not decide the issue of negligence prior to suspending Petitioner James

D. Gillaspie's license and Petitioner D. C. Gillaspie's registrations, and that the trial court erred in allowing evidence as to the fault of D. C. Gillaspie. The trial court in this case ignored the law and committed reversible error by finding that no agency relationship existed and that D. C. Gillaspie was not liable to anyone in damages. The Supreme Court of Texas was correct in upholding the Court of Civil Appeals reversal of the trial court on that portion of the judgment pertaining to D. C. Gillaspie, and affirming as to James D. Gillaspie. It was the duty of the Respondent to suspend without a finding of fault. See *Corzelius v. Railroad Commission et al.*, Tex. Civ. App. 182 S. W. 2d 412, 415 (no writ of error applied for), in which the court said:

> "The general rule is well settled that boards or commissions which are creatures of the statutes, can exercise only such authority as is conferred upon them by law in clear and express language and that authority will not be construed as being by implication."

The trial judge had only the authority to affirm, modify, or reverse the suspension order and could not make a finding of liability. See *Texas Liquor Control Board v. Abogado*, Tex. Civ. App. 172 S. W. 2d 778, 780 (no writ of error applied for) in which the court held:

> "It is fundamental, we take it, regardless of whether the proceeding be administrative or judicial, where an appeal is allowed, that the power of the reviewing body is confined to the

issues before the body, the order of which is reviewed. This is especially true, we think, where the statute conferring the power of the review does not give the reviewing authority broader power."

We now some to the second question presented where Petitioners argue at great length that they are being deprived of property without due process of law by the failure to provide a hearing on their liability in damages prior to suspension. Whether they are being deprived of property without due process of law by the Respondent suspending prior to a hearing on their liability is not the issue on this appeal. The weight of authority is that the right to operate a motor vehicle upon the public highways is a privilege as distinguished from a property right, and is therefore subject to reasonable exercise of the police power. This is a well settled proposition of law in Texas. *Taylor v. State*, 209 S.W. 2d 191 (1948). Also in other states; *Goodwin v. Superior Court of Yavapai County*, 68 Ariz. 108, 201 P. 2d 124 (1948); and under the decisions of this Honorable Court; *Hess v. Powlaski*, 274 U.S. 352; *Hendrick v. Maryland*, 235 U.S. 610; *Continental Baking Co. v. Woodring*, 286 U.S. 352; *Ex Parte Poresky*, 290 U.S. 30; *Reitz v. Mealey*, 314 U.S. 33, 62 S.Ct. 24, 86 L.Ed. 21.

The query then is not whether there was or could be a deprivation of property without due process of law under the Texas Safety-Responsibility Act, but rather, whether the operation of the Safety-Responsibility Act which requires a suspension of a license or registration without a prior hearing on the liabil-

ity of the parties involved, is a reasonable exercise of the police power of the State.

Again turning to the decisions of other states, we find them holding, without exception, that a license or registration is a privilege granted by the State, and that failure to comply with Financial Responsibility Acts such as the Texas Act subjects this privilege to revocation, and that such laws are reasonable and valid exercises of the police powers of the State. Again calling this Honorable Court's attention to the Kentucky case of *Ballow v. Reeves*, supra, the appellant contended in that case that the act did not provide any hearing before suspension and deprived him of due process of law. The court ruled in that case against the appellants contention in the following language:

> "The right to operate a motor vehicle is a privilege, subject to reasonable regulation by the State in the exercise of its police power. Commonwealth v. Harris, 278 Ky. 218, 128 S. W. 2d 579. It has generally been recognized that financial responsibility laws constitute both reasonable regulations of the highways, and proper measures to protect the public safety. See in re Opinion of the Justices, 81 N.H. 566, 129 A. 117, 39 A.L.R. 1023, and Rosenblum et al v. Griffin, Com'r. of Motor Vehicles, 89 N.H. 314, 197 A. 701, 115 A.L.R. 1367.
>
> "It seems clear the legislature may require, as a condition to the right of operating a motor vehicle, the procurement of insurance or the furnishing of other proof of financial responsibility. . . ."

The Court, later in the opinion, had this to say:

> "With regard to appellant's second point, we do not find he has been deprived of any property rights, without due process of law, since permission to operate a motor vehicle on the highways of this commonwealth is not a right but a privilege, suspending the privilege for failure to comply with reasonable regulations is not a denial of due process. See Ratliff v. Lampton, Cal. App. 187 P. 2d 421, and Goodwin v. Superior Court of Yavapai County, et al., 68 Ariz. 108, 201 P. 2d 124, and Heart v. Fletcher, Com'r. of Motor Vehicles, 184 Mic. 659, 53 N.Y.S. 2d 369."

Another case directly in point is the case of *Doyle v. Kahl*, 46 N.W. 2d 52 (1952), where Justice Hays, speaking for the Supreme Court of Iowa, said:

> "Appellant further contends that the suspension of the license without a hearing is depriving him of his property without due process of law. The fallacy of this claim is that his so-called property right is not such in the ordinary sense. It is a privilege granted to him under certain specific conditions, subject to all laws pertaining thereto at the time the same is issued or may later be enacted, if otherwise valid. That this is the established rule, see: 60 C.J.S., Motor Vehicles, pars. 109, 119, 120, 159; 108 A.L.R. (Anno.) 1156; 125 A.L.R. (Anno.) 1455; Larr v. Dignan, 317 Mich. 121, 26 N.W. 2d 872; Hendrick v. Maryland, 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed. 385."

In *Escobedo v. State Department of Motor Vehicles*, 222 P. 2d 1, the California Court, in construing their financial responsibility law, said:

"Suspension of the license without prior hearing but subject to subsequent judicial review did not violate due process if reasonably justified by a compelling public interest. (Bourjois, Inc. v. Chapman (1937), 301 U.S. 183, 189, 57 S.Ct. 691, 91 L.Ed. 1027, 1032; see also Philips v. Commissioner (1931) 283 U.S. 589, 596-597, 51 S.Ct. 608, 75 L.Ed. 1289). The compelling public interest here appears from the obvious carelessness and financial irresponsibility of a substantial number of drivers and from the following allegations of the petition: There are 3,879,931 motor vehicles registered in California. During the first four months after the effective date of the law now under consideration, 19,808 persons were ordered by the Department to establish that they were adequately insured or deposit security. More than 6,567 operators' licenses were suspended under the applicable law, and more than 1,300 'citations per month for suspension of license' were issued by the Department. In these circumstances it is apparent to require a hearing in every case before suspension of a license would have substantially burdened and delayed if not defeated the operation of the law. The requirement of due process was recognized and accepted by section 317 of the Vehicle Code, which declared 'nothing in this code shall be deemed to prevent a review or other action as may be permitted by the Constitution and laws of this State by a court of competent jurisdiction with reference to any order of the Department refusing, cancelling, suspending or revoking a license.' Such review can be had by an application to the Superior Court for writ of mandate (Code Civ. Proc. Sections 1085, 1086). Also, an action for declaratory relief has been used in a comparable

situation (Ratliff v. Lampton (1948), supra, 32 Cal. 226, 195 P. 2d 792, 10 A.L.R. 2d 826)."

Further authority for the validity of suspensions without a prior hearing is found in the case of *Heart v. Fletcher, Com'r. of Motor Vehicles*, 184 Misc. 659, 53 N.Y.S. 2d 369, in which the Court held:

> "The payment by petitioner of the required fees upon the issuance to him of the operator's license and registration certificate did not convert the privilege granted into a property right of which he might not be deprived without a notice and hearing, i.e., due process of law. The privilege was granted subject to the terms of prescribed statutory conditions of which section 94-c of the Vehicle and Traffic Law was a part. In Reitz v. Mealey, 314 U.S. 33, 36, 62 S.Ct. 24, 26, 86 L.Ed. 21, the court said: 'Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highways is consonant with due process."

See also *Watson v. State Div. of Motor Vehicles*, 212 Cal. 279, 298 Pacific 2d 481; *Ragland v. Wallace*, 80 Ohio App. 210, 70 N.E. 2d 118 (1946); *State v. Stehlek*, 56 N.W. 2d 514 (1953); *Prichard v. Battle*, 178 Va. 455, 17 S.E. 2d 393 (1941); *Rosenblum v. Griffin*, 197 Atl. 701, 115 A.L.R. 1367; *People v. Stryker*, 206 N.Y.S. 146, 124 Misc. 1 (1924); *LaPlante v. State Board of Public Roads*, 47 R.I. 258, 131 Atl. 641 (1926). And see also *Ex Parte Poresky*, 290 U.S. 30; *Reitz v. Mealey*, 314 U.S. 33, 62 S.Ct. 24, hereinbefore quoted and discussed.

Therefore, under the above authorities, it is clear beyond dispute that petitioners were not deprived of property without due process of law by the Department's failure to determine fault prior to the suspension of the license of Petitioner James D. Gillaspie and registrations of Petitioner D. C. Gillaspie. The license and registrations, respectively, being privileges, no property rights were involved; further, the requirement that motorists and vehicle owners comply with the provisions of the Safety-Responsibility Act as a condition to further use this privilege is a reasonable and valid exercise of the police powers of the State in regulating the use of the highways of the State and in promoting public safety.

Petitioner D. C. Gillaspie argues that the trial court found that no agency relationship existed between him and his minor son Petitioner James D. Gillaspie and therefore he was not liable to any one in damages. That when the Supreme Court of Texas upheld the Court of Civil Appeals reversal of the trial court and upheld the Respondent's order, the Court of Civil Appeals held in effect that the Act adopted the "Family Purpose Doctrine" in Texas, because, the trial court having found no agency relationship existed, the "Family Purpose Doctrine" was the only theory of liability under which he could be found liable.

Petitioner D. C. Gillaspie is wrong in this contention on two bases. The first is that there are theories other than an agency relationship and the "Family Purpose Doctrine" under which the owner of an automobile may be held liable for damages caused by an-

other person authorized to drive his motor vehicle. And secondly, Petitioner fails to understand that the Court of Civil Appeals and the Supreme Court of Texas held, and correctly so, that neither the Respondent nor the trial court on appeal could determine the question of liability, and therefore the trial court erred in holding that no agency relationship existed and that therefore Petitioner could not be held liable in damages. That the Court of Civil Appeals and the Supreme Court of Texas were correct in this holding has been shown herein.

We now come to the third question raised by Petitioners that the vesting in the trial judge discretion as to whether a stay may be granted deprives them of property without due process of law and equal protection of the law under the Fourteenth Amendment of the United States Constitution.

Section 2b, Article 6701h, provides as follows:

"Sec. 2. DEPARTMENT TO ADMINISTER ACT APPEAL TO COURT

"(a) The Department shall administer and enforce the provisions of this Act and may make rules and regulations necessary for its administration, and shall provide for hearings upon request of persons aggrieved by orders or acts of the Department under the provisions of this Act.

"(b) Any order or act of the Department, under the provisions of this Act, may be subject to review within ten (10) days after notice thereof, by appeal to the County Court at Law at the instance of any party in interest and in the county wherein the person aggrieved by such order or act resides, or if there be no County

Court at Law therein, then in the County Court of said county, or if there be no County Court having jurisdiction, then such jurisdiction shall be in the District Court of said county, and such court is hereby vested with jurisdiction, and such appeal shall be by trial de novo. *The court shall determine whether the filing of the appeal shall operate as a stay of any such order or decision of the Department. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the Department in whole or in part.*

"(c) Trial in the court shall be de novo, with the burden of proof upon the Department, and the substantial evidence rule shall not be invoked or apply, but the same shall be tried without regard to any prior holding of fact or law by the Department, and judgment entered only upon the evidence offered at the trial by the Court. A trial by jury may be had upon proper application." (Emphasis supplied.)

In this case when Petitioners filed their appeal from the orders of the Respondent in County Court at Law No. 2, Bexar County, Texas, the Judge granted them a stay of the enforcement of the order until the case could be heard on the merits.

It is elementary that a person who has not been injured by a particular provision of a statute is in no position to attack such provision. *Dallas Taxicab Co. v. City of Dallas*, 68 S. W. 2d 359, 363 (Tex. Civ. App. 1934); *Houston Oil Co. of Texas v. Lawson*, 175 S. W. 2d 716, 720 (Tex. Civ. App. 1943, error ref.); *Atwood v. State*, 121 S. W. 2d 353, 357 (Tex. Crim. 1938); *Myers v. State*, 184 S. W. 2d 924 (Tex. Crim. 1945); *Texas Co. v. Honaker*, 282 S. W. 879,

883 (Tex. Civ. App. 1926, error ref. 283 S. W. 1071); *City of Waco v. Londingham*, 158 S. W. 2d 79, 81 (Tex. Civ. App. 1942, erro rref.); *State v. Cage*, 176 S. W. 928, 931 (Tex. Civ. App. 1915, error ref.). In the latter case the rule was reiterated that only those against whom a discrimination is made by statute can complain of discrimination.

Petitioners, therefore, cannot complain that they were deprived of a stay order, because they were granted a stay by the Court and, therefore, under the above cited authority, since they were granted a stay, they cannot attack the validity of the Act upon the theory that if they had been denied a stay, their rights would have been affected.

Petitioners contend, however, notwithstanding the fact that they were not affected by the provision, that the failure of the Act to provide for an absolute stay on appeal renders the Act unconstitutional as a denial of due process. This is the same argument that was advanced in *Heart v. Fletcher*, 53 N.Y.S. 2d 369, in which the applicable provision provides as follows:

> "Any person aggrieved by an order or act of the commissioner under this section or under the provisions of this Article, may maintain a proceeding under article seventy-eight of the civil practice act *but the commencement of such proceeding shall not suspend the order or act unless the stay thereof shall be allowed by said court pending final determination of the review.* (Sec. 94-d, Vehicle and Traffic Laws." (Emphasis supplied.)

In holding that the above quoted provision of the New York Financial Responsibility Law afforded the petitioner his day in court, the opinion in *Heart v. Fletcher* quoted from *Anderson National Bank v. Luckett*, 321 U. S. 233, 246, 247, 64 S. Ct. 599, 606, 151 A.L.R. 824, as follows:

> "What is due process in a procedure affecting property interests must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case (citing cases). The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. If that is preserved, the demands of due process are fulfilled. * * *For this reason also it is not an indispensable requirement of due process that every procedure affecting the ownership or disposition of property be exclusively by judicial proceeding. Statutory proceedings affecting property rights, which, by later resort to the courts, secure to adverse parties an opportunity to be heard, suitable to the occasion, do not deny due process."

The Court, in *Heart v. Fletcher*, supra, after quoting the above rule, said:

> "This rule is particularly true when the initial or preliminary act is an administrative one—as was the act of the respondent in preparing and serving the notice of suspension on the petitioner in the instant case. *It seems that the requirement of due process is satisfied if the*

administrative action may be stayed and the aggireved party may challenge the act in a judicial proceeding. See Anderson National Bank v. Luckett, supra; Bourjois, Inc. v. Chapman, 301 U. S. 183, 189, 57 S .Ct. 691, 81 L. Ed. 1027; Porter v. Investors' Syndicate, 286 U. S. 461, 470, 471, 52 S .Ct. 617, 76 L. Ed. 1226; People v. Brooklyn Garden Apartments, Inc., 169 Misc. 610, 614, 10 N. Y. S. 2d 63, 67, affirmed 283 N. Y. 373, 381, 382, 28 N. E. 2d 877, 880." (Emphasis supplied.)

The above authority is for the proposition that due process has been afforded even if the license of Petitioner James D. Gillaspie and the registrations of Petitioner D. C. Gillaspie can be said to be property rights. That they are not such, but only privileges subject to reasonable regulation by the State in the exercise of its police power, has long been established. *Taylor v. State*, 151 Tex. Cr. R. 568, 209 S. W. 2d 191; *Department of Public Safety v. Robertson*, (Tex. Civ. App.), 203 S. W. 2d 590; *Packard v. Banton* ,264 U. S. 140, 44 S. Ct. 257, 68 L. Ed. 596, *Ballow v. Reeves*, Ky., 238 S. W. 2d 141 (1951); *Reitz v. Mealey*, 314 U. S. 33, 62 S. Ct. 24, 26, 86 L. Ed. 21 (1941).

Statutes enacted under the police power which dispense with hearings preliminary to suspension of licenses are not unique to the field of drivers' licenses. *State v. Stehlek*, 56 N. W. 2d 514. In the *Stehlek* case, supra, the Supreme Court of Wisconsin, January 6, 1953, construed that State's Financial Responsibility Law in the light of a similar attack. The provision for a review (Sec. 85.09 (2) (b) Stats.) pro-

vided that "the filing of such a petition shall not suspend the order or act unless a stay thereof shall be allowed by a judge of said court pending final determination of the review." The Wisconsin Court, in an exhaustive opinion, said at page 518:

> "The deliberate omission of hearing procedure preliminary to the suspension of a license in the field of motor vehicle operators' licenses does not offend the due process clauses of the U. S. and state constitutions* * * ."

Other cases upholding the constitutionality of financial responsibility laws with similar provisions authorizing, but not guaranteeing, a stay on appeal are *Ballow v. Reeves*, 238 S. W. 2d 141 (Kentucky, 1951) and *Doyle v. Kahl*, 46 N. W. 2d 52 (Iowa, 1951).

If the suspension of a property right is not offensive when a later resort to the courts is provided, how much more is due process vouchsafed when that which is suspended is a privilege granted by the State and a trial de novo is permitted, absent the substantial evidence rule, and a stay permitted, and all this preceded by the right to a hearing on request. (Sec. 2, Art. 6701h). A ministerial act of suspending a driver's license after a conviction has been held to be valid even though not reviewable on appeal at all. *Appeal of Brennan*, 344 Pa. 209, 25 Atl. 2d 155 (1942). See also *In re Probasco*, 269 Mich. 453, 257 N.W. 861 (1934.)

The courts of Texas have not been silent on authority of the State to deny appeals altogether in cases

involving the suspension or denial of privileges granted by the State in the exercise of its police power. See *State of Texas v. Paine L. Bush, et al.*, 253 S. W. 2d 269 (1952), and the many cases construing the Liquor Laws of this State. 6 Tex. Jur. Supp. 377. See also *Crowley v. Christensen*, 137 U. S. 86, 11 Sup. Ct. 13, 34 L. Ed. 620. A recent Texas case dealing with the right of the Texas Legislature to deny judicial review of a decision of an administrative officer is the Supreme Court case of *Texas Highway Commission v. El Paso Bldg. and Const. Trades Council*, 149 Tex. 457, 234 S. W. 2d 857 (1950).

If the Legislature can validly deny the right of appeal from a suspension of a privilege, it can also, in the exercise of the police power for the protection of the public safety and welfare, limit the relief available to a petitioner pending the final determination of his case in a graciously provided judicial proceeding that extends even more than due process requires.

The Supreme Court of Texas in its opinion below adequately disposed of Petitioner's contention in the following language:

> "Subdivisions (b) and (c) of Section 2 of the Act provide that any order or act of the Department may be subject to review by appeal to court, that the trial in court shall be de novo, and the substantial evidence rule shall not be invoked or apply, but that the trial shall be without regard to any prior holding of fact or law by the Department, and that a trial by jury may be had. Subdivision (b) of section 2 further

provides that the court shall determine whether the filing and the appeal shall operate as a stay of the order or decision of the Department. In the instant case the county court at law, on the day the petitioners' suit was filed appealing from the Department's orders of suspension, made an order staying both orders of suspension 'pending final determination of this cause on its merits, or until further order of this court.'

"The parts of the Act attacked by petitioners and the procedure under them do not in our opinion deny the equal protection of the law. Rosenblum v. Griffin, 89 N. H. 314, 197 A. 701, 115 A.L.R. 1367; Surtman v. Secretary of State, 309 Mich. 270, 15 N. W. 2d 471."

It therefore follows that the failure of the Safety-Responsibility Act to provide a mandatory stay on appeal does not result in the suspensions being deprivation of property, much less privilege, without due process of law.

Respondent's Counter Point Four to Petitioner's Point One
(Restated)

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act does not deprive Petitioners of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution in prohibiting the Transfer of Registration of a suspended vehicle until the Respondent is satisfied that such transfer is proposed in good faith and not for the purpose or with the effect of defeating the purpose of the Act.

STATEMENT, ARGUMENT AND AUTHORITIES

Petitioners partially quote Section 30 of Article V of the Act and contend that such Section results in the denial to an owner of the right to sell or encumber his automobile and, therefore, constitutes a taking of that property. Section 30 of Article 6701h reads as follows:

> "Section 30. Transfer of Registration to Defeat Purpose of Act Prohibited
>
> "If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the motor vehicle in respect of which such registration was issued registered in any other name *until the Department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of the Act.* Nothing in this Section shall in any wise affect the rights of any conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this Section." (Emphasis supplied.)

Here again Petitioners are attacking a particular provision of a statute without first showing they have been injured thereunder. (See authorities cited under Counter Point Three.)

Petitioner D. C. Gillaspie, whose registration was suspended, did not show that he had made application to the Respondent for permission to transfer the registration of his suspended motor vehicle for the purpose of encumbering or selling it, nor does he

show that the Respondent refused to allow him to transfer the motor vehicle registration for those purposes.

Therefore, not being directly and adversely affected by the above provision complained of, the Petitioner D. C. Gillaspie is in no position to contest its validity, and this Honorable Court need not at this time undertake to determine the effect of this particular provision.

However, assuming for the purpose of argument that this particular provision did adversely effect the rights of Petitioner D. C. Gillaspie, under no circumstances could it be argued that it deprived him of property without due process of law and is therefore unconstitutional.

It is the *italicized* portion of Section 30 of the Act, quoted above, which was omitted from the Petitioner's discussion and which is controlling in this case. The Act provides a means whereby Respondent can lift a suspension order for the purpose of permitting a transfer of registration. When the suspension has been lifted for this limited purpose, even though Petitioner has not complied with the security provisions of the Act, the transfer of registration can be effected at the office of the Highway Department. Articles 1434 and 1435 of the Penal Code would not stand in the way because the registrations of the vehicles would not be suspended, but would be reinstated for the purpose of permitting the sale.

At most, Petitioner argues that the operation of two Articles of the Penal Code result in the taking of property without due process of law. It is a strained argument to contend that the operation of one

law results in the unconstitutionality of another. If the Petitioner seeks to attack the constitutionality of the Motor Vehicle Registration or Certificate of Title Laws, this should be done in a separate proceeding.

In the case of *Garford Trucking, Inc. v. Hoffman*, 114 N.J.L. 522, 177 Atl. 882 (1935), the Supreme Court of New Jersey considered this same provision in the New Jersey statute which empowered the Commissioner of Motor Vehicles to refuse to register an automobile unless satisfied that the transfer was made in good faith. It was contended that the Financial Responsibility Act was unconstitutional for failing to provide or specify a method of procedure for making it appear to the commissioner's satisfaction that a transfer is a bona fide sale. The Court held the provisions constitutional as bearing a direct relationship to public safety, and as being a fair and reasonable regulatory measure under the police powers of the State. The Court in so holding said:

> "It is well settled that a license to operate a motor vehicle is a mere privilege; it is in no sense a contract or property right. Hendrick v. Maryland, supra, and thus it has been held that a revocation of such a license, even without notice does not deprive the licensee of his property withou tdue process of law or otherwise, so long as the licensee is given the right of appeal or review of the revocation."

And further in the Opinion the Court says:

> "Nor does the fact that the granting or revocation of a license, under the Act, is committed

to an administrative officer, who may be authorized to exercise his discretion in so doing, violate any constitutional guaranty. If for good cause the administrative official is satisfied that the license should be revoked, he may, upon proper proofs, do so. Gundling v. Chicago, 177 U.S. 183, 20 S.Ct. 633, 44 L.Ed. 725 (vesting power in Mayor to determine whether applicant to sell cigarettes has good character and reputation); Hall v. Geiger-Jones Co., 242 U.S. 539, 37 S.Ct. 217, 61 L.Ed. 491 (Commissioner given the right to revoke a license to sell stock if licensee is (a) of bad repute; (b) has violated any provision of the Act; or (c) has engaged, or is about to engage, under favor of such license, in illegitimate business or fraudulent transactions. Prosecutor has the right of appeal or review."

Petitioner contends that the denial of the right to sell or encumber his automobile constitutes a taking of property without due process of law. In support of this contention, he cited the following cases: *Bielecki v. City of Port Arthur*, 12 S.W. 2d 976 (Comm. App.); *City of Wink v. Griffith Amusement*, 235 S. W. 513 (Sup. Ct.); *Crossman v. City of Galveston*, 247 S.W. 810 (Sup. Ct.). These cases can be distinguished from the case at bar because in those cases vested property rights were found to exist and in this case the courts have found that the right to operate a motor vehicle upon the highways of this State is a privilege and not a property right and is subject to regulation under the police powers. *Garford Trucking, Inc. v. Huffman*, supra, and cases cited under Counter Points One, Two and Three, supra.

The Legislature, in passing Section 30 of Article 6701h, took steps to insure against any proceedings which would circumvent the purposes of the law. This is a reasonable exercise of the police power of the State in regulating the use of motor vehicles in the State. The right to operate a motor vehicle on the highways of the State of Texas is a privilege which is subject to control under the police power. (See cases cited under Counter Point One, Two and Three, supra.)

Respondent's Counter Point Five to Petitioner's Point Three
(Restated)

The Supreme Court of Texas correctly held that the Texas Motor Vehicle Safety Responsibility Act set a sufficient standard to guide the Department in determining the amount of security required and did not deprive Petitioners of their property without due process of law and the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

STATEMENT, ARGUMENT AND AUTHORITIES

The Petitioners contend that the Legislature delegated to the Respondent the power to determine the amount of security to be deposited to prevent a suspension and application of the penalties of the Act, and that in so doing, deprived Petitioners of their property without due process and equal protection

of the law under the Fourteenth Amendment of the United States Constitution for failure to provide a sufficient standard to guide the Respondent.

It is well established constitutional law that the Legislature may delegate to an administrative agency the right to make findings of fact upon which the enforcement of law is based, so long as a sufficient standard is provided to guide the agency in making such findings. The Petitioner, in his brief, cited two cases: *Trapp v. Shell Oil Co.*, 198 S.W. 2d 424, and *Clark v. Briscoe Ins. Co.*, 200 S.W. 2d 674. In both of these cases it was held that the provisions of the Acts under attack as being unconstitutional for failure to provide a sufficient standard, did in fact provide a sufficient standard, and therefore were constitutional.

There being no difference between the Petitioner and Respondent as to the correctness of the general law involved, the question then is whether Article 6701h provides a sufficient standard to guide the Department in determining the amount of security.

Let us examine Article 6701h to determine what safeguards are provided against discriminatory action by the Respondent. Section 5(a) provides in part:

> ". . . the Department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner."

Under Section 10, in determining the amount of security sufficient to cover the probable damages, the

Respondent cannot require more than the basic limits of a motor vehicle liability policy of $5,000.00 for bodily injury or death of one person, $10,000.00 for two or more, and $5,000.00 property damages for any one accident. Section 4 requires a report of the accident, in which report the amount of property damages to the party making such report must be given, and the nature and extent of any personal injuries received. This section also provides that the operator shall furnish such additional relevant information as the Respondent shall require and, by virtue of the authority conferred upon the Respondent under Section 2 to make rules and regulations necessary for the enforcement of the Act, the Respondent can require the damaged parties to submit garage estimates and doctor's reports before it will determine the amount of security required of the other parties to be deposited on their behalf.

And, further, Section 10 provides that the Respondent may reduce the amount of security ordered in any case within six months after the date of the accident if, in its judgment, the amount ordered is excessive. Section 2(a) provides that the Respondent shall provide for hearings upon requests of persons aggrieved by orders or acts of the Respondent under the provisions of the Act, and Section 2(b) provides for a review of the acts or orders of the Respondent to a court with proper jurisdiction.

Again we turn to the law of the sister State of California where under the California Safety-Responsibility Law, after which the Texas law was patterned, this very same question was raised. In *Escobedo v. State Department of Motor Vehicles*, 35

Cal. 2d 870, 222 Pacific 2d 1, Justice Rey Schauer, speaking for the Supreme Court of California, held the Act did set a sufficient standard in the following words:

> "Giving to the Department of Motor Vehicles the power and duty to find the facts on which suspension of license depends, and to exercise limited 'judgment' did not violate Section 1 of Article III or Section 1 of Article VI of the state Constitution (see Suckow v. Alderson (1920), 182 Cal. 247, 250, 187 p. 965; Dominguez Land Corp. v. Daugherty (1925), 196 Cal. 453, 483, 238 p. 697, 44 L.R.A. 1.) Although the Legislature did not provide detailed directions as to the manner in which the Department was to reach a 'judgment' as to the amount of security required, it specified as a guide the probable size of 'any [court] judgment' which 'may be recovered' (Veh.Code.Sec.420). The facts and legal principles governing the recovery of judgments for damages are a matter of public knowledge and provide a reasonably sufficient certain standard to be followed by the Department. (Cf. Dominguez Land Corp. v. Doughterty (1925), supra, pp. 485-486 of 196 Cal. pp. 709-710 of 238 P.; Jersey Maid Milk Products Co. v. Brack (1939), 13 Cal. 2d 620, 652-657, 91 P. 2d 577; Housing Authority of Los Angeles County v. Dockweiler, (1939) 14 Cal. 2d 437, 461-462, 94 P. 2d 794.)"

The Petitioners, in contending that the Respondent cannot determine the amount of physical injury, is in effect saying that there are no legal principles of law governing the recovery of damages, and if he is correct in this contention, then how can a judge or

jury determine the amount of damages in any personal injury suit.

Petitioners further contend that no standard is fixed because the Act does not provide any definite and fixed amounts of damages for personal injuries as in the Workmen's Compensation Law where the compensation or damage is definitely fixed. Petitioners, in making this argument, overlook the fact that the underlying theory of the Workmen's Compensation Law is the employer's waiving his common law defense of absence of fault in exchange for the employee's waiving his common law claim to his theory of damages. The purpose of the Act was not to change the established legal principles governing the recovery of damages, which would have been the effect if definite and fixed amounts were fixed as in the Workmen's Compensation Law. The purpose was to require a person involved in an accident, if he could not otherwise show financial responsibility, to deposit an amount of money as security with the Respondent that would satisfy the damages done to the other party in the event the other party obtained a judgment in an amount based upon the established legal principles governing the recovery of damages.

In addition to providing a standard based upon the legal principles governing the recovery of damages, the Act sets a limit on the amount of security the Respondent can demand. Even though the Respondent may find that in its opinion the amount that would be sufficient to satisfy any judgment or judgments may be in excess of these amounts, the Respondent cannot require security in excess of the basic limits of a motor vehicle liability policy of

$5,000.00 for bodily injury or death to one person, $10,000 for two or more, and $5,000.00 property damage for any one accident.

Petitioners argue that since no standard or criteria is laid down by the Act, the Respondent may run rampant in the wide latitudes of an unbridled discretion. A similar contention was made in the New York case of *Heart v. Fletcher, Com'r. of Motor Vehicles*, 184 Misc. 659, 53 N.Y.S. 2d 369. Justice Fred D. Cribb had no trouble in disposing of this contention as having no merit in the following language:

> "Counsel for Petitioner in his brief asserts that Section 94-e of the Vehicle and Traffic Law gives the Commissioner of Motor Vehicles 'power to deprive a citizen of property or rights in property, and it also gives the commissioner power to render judgment, i. e., assessing damages in an amount up to five thousand dollars.' Such is not the fact. The commissioner does not, nor may he, fix or finally determine the damages. That determination is left to the court in a subsequent action where the Petitioner may appeal and submit his proofs. *Neither is the amount to be deposited by the Petitioner as a protection to the injured party in this case subject to the sole discretion or whim of the commissioner. The amount of deposit first determined by him is subject to review as provided by subdivision (c) of Section 94 of the Vehicle and Traffic Law which reads*: 'Any person aggrieved by an order or act of the commissioner under this section or under provisions of this article, may maintain a proceeding under article seventy-eight of the civil practice act but the

commencement of such a proceeding shall not suspend the order or act unless a stay thereof shall be allowed by said court pending final determination of the review.' *Pursuant to these provisions Petitioner is now having his day in court.*" (Emphasis supplied.)

The above arguments and authorities clearly show that the Act provides a sufficient guide or standard for the Respondent in determining the amount of security that shall be required. To hold otherwise would ignore the fact that every collision or accident has no brother as regards the facts. It would be impossible to set a standard amount of damage for a broken arm in any fixed amount, as the damage would vary with the age and occupation of the injured individual, and the Respondent or the law would be charged with arbitrary discrimination. It would be unfair in the face of public knowledge of the legal principles of law governing the recovery of damages to demand the same security for the broken leg of a four-year old child as it would for that of a professional football player.

In accepting the view that Texas appellate courts must follow the old principle of abiding by the decisions of the appellate courts of the States from which Texas adopted its statute, because it is presumed the Texas Legislature intended to adopt that construction, this Honorable Court would be correct in upholding the decision of the Supreme Court of Texas which followed the "whitehorse" case of *Escobedo v. State Department of Motor Vehicles, et al.*, supra., and hold that Article 6701h provides a reasonable standard, and does not deprive Peti-

tioners of property without due process of law or equal protection of the law under the Fourteenth Amendment of the United States Constitution.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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